

CIVIL SERVICE COMMISSION MINUTES
MAY 6, 2009

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

A.Y. Casillas
Barry I. Newman
Francesca Krauel
W. Dale Bailey
William O'Connor

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
Karen F. Landers, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission

June 3, 2009

SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
MAY 6, 2009

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
1, 8, 9, 11	11		14

COMMENTS: Motion by Newman to approve all items not held for discussion; seconded by Bailey. Carried.

CLOSED SESSION AGENDA

County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Krauel: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Bradley
Fields, Esq., on behalf of **2008-11**, appealing an Order
of Demotion and Charges from the Probation Department.

B. Commissioner Bailey: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Fern
Steiner, Esq., on behalf of **Heidi Kay**, Office
Assistant, appealing an Order of Suspension and Charges
from the Department of Parks and Recreation.

C. CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION
(GOV. CODE SEC. 54956.9(a)) San Diego County Library v.
San Diego County Civil Service Commission, Superior
Court Case No. 37-2009-00085505-CU-WM-CTL.

OPEN SESSION AGENDA
County Administration Center, Room 358

WELCOME

1. Welcome Bill O'Connor, newly appointed Civil Service Commissioner.

Civil Service Commission President, A.Y. Casillas, welcomed Commissioner O'Connor on behalf of the entire Commission and Commission staff.

MINUTES

2. Approval of the Minutes of the special meeting of April 1, 2009.

Approved.

3. Approval of the Minutes of the special meeting of April 7, 2009.

Approved.

CONFIRMATION OF ASSIGNMENTS

4. Commissioner Newman: Sarah Smith-Withey, Worksite Organizer, SEIU Local 221, on behalf of **Jessie Herrera**, Building Maintenance Engineer Assistant, appealing his placement on Compulsory Leave by the Department of General Services.

Confirmed.

5. Commissioner Casillas: Solita Kampley, Senior Worksite Organizer, SEIU Local 221, on behalf of **Oscar Orellana**, Mental Health Aide, appealing a Final Order of Suspension and Charges from the Health and Human Services Agency.

Confirmed.

6. Commissioner Bailey: Brad Fields, Esq., on behalf of **2009-04**, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

Confirmed.

7. Commissioner Krauel: Karen Paredes, Worksite Organizer, SEIU Local 221, on behalf of **Eugene Arrington**, Protective Services Assistant, appealing an Order of Suspension and Charges from the Health and Human Services Agency.

Confirmed.

DISCIPLINE

Findings

8. Commissioner Krauel: Bradley Fields, Esq., on behalf of **2008-11**, appealing an Order of Demotion and Charges from the Probation Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of 2008-11, from a written Order of Demotion in Rank and Charges demoting Employee from the class and position of Correctional Deputy Probation Officer II (Class No. 5069) to the class and position of Correctional Deputy Probation Officer I (Class No. 5068) in the Probation Department, was presented to the Civil Service Commission. The Commission appointed Commissioner Francesca Krauel to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on March 26, 2009.

The official file of the proceedings shows that the Order of Demotion in Rank and Charges was dated October 30, 2008, signed by Mack Jenkins, Chief Probation Officer, and that the causes of discipline were: Cause I: You are guilty of Conduct Unbecoming an Officer of the Probation Department and an Employee of the County of San Diego, pursuant to Civil Service Rule 7.2(m), when You made an inappropriate sexual comment in the workplace and you violated directives to not discuss your pending investigation. Cause II: You are guilty of Insubordination, pursuant to Civil Service Rule section 7.2(c). Cause III: You are guilty of Discourteous Behavior, pursuant to Civil Service Rule 7.2(h). Cause IV: You are guilty of Failure of Good Behavior, pursuant to Civil Service Rule 7.2(r).

It is found that Employee uttered an inappropriate sexual comment as alleged in Cause I(a) of the Order of Demotion. The Employee admitted making the comment. The Department lawfully ordered Employee not to discuss the matter with fellow staff. Employee was personally notified of this

order and thereafter, on several occasions, Employee discussed the matter with a fellow staff member.

Conclusion: As to the misconduct, it is concluded that Employee's comment violated the facility's, where she was working, Personnel and Management Policies 2.4.3 as set forth in Department Policy 1306.5, Standards of Conduct, subsection U, Courtesy, and 2.4.5 (Relating Professionally with Staff). Employee's forbidden discussion violated Standard of Conduct Y, Obedience of Lawful Orders of Department Policy 1306.5. As to Cause I, it is concluded that Employee's comment and forbidden discussion were unbecoming an officer of the Probation Department within the meaning of Civil Service Rule 7.2(m). As to Cause II, it is concluded that Employee's comment and forbidden discussion were insubordinate within the meaning of Civil Service Rule 7.2(c). As to Cause III, it is concluded that Employee's comment was discourteous within the meaning of Civil Service Rule 7.2(h). As to Cause IV, it is concluded that Employee's comment and forbidden discussion were Failures of Good Behavior within the meaning of Civil Service Rule 7.2(r).

Level of Discipline: The Department's demotion in rank of Employee is not consistent with the policy of progressive discipline. During Employee's 12-year work record as a CDPO II, Employee received Overall "standard" to "above standard" performance ratings; Performance Appraisal Reports containing comments and individual category ratings that noted exceptional performance; ratings in some areas as "deficient"; and a 1997 Letter of Reprimand and ten years later, a 2007 Record of Discussion. Employee's recent performance and Employee's conduct in this matter, culminating in several acts of forbidden discussion, have displayed deficiencies. Employee's misconduct was serious. Accordingly, Employee should be disciplined. However, demotion in rank is not the next level of discipline following a Record of Discussion and a Letter of Reprimand. The Department presented no evidence or argument as to why it was proper to impose discipline contrary to the policy of progressive discipline. Therefore, consistent with the policy of progressive discipline, Employee should receive discipline in the form of a temporary pay step reduction equivalent to a forty-five (45) workday suspension.

Based on the findings and conclusions set forth above, it is therefore recommended that the Order of Demotion in Rank be modified to a Pay Step Reduction equivalent to a forty-five (45) workday suspension; that Employee be awarded back pay, benefits, and interest from the date of the Order, minus any

wages Employee received from outside employment and minus the Pay Step Reduction referred to above; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Krauel to approve Findings and Recommendations;
seconded by Bailey:**

Discussion:

Commissioner Newman stated that he would be voting against the motion as made. He feels that this matter did not fall under progressive discipline, but was an act serious enough to justify the Department's determination and believes the Department's discipline to be appropriate.

Call for vote:

AYES:	CASILLAS, BAILEY, KRAUEL
NOES:	NEWMAN
ABSTENTIONS:	O'CONNOR
ABSENT:	NONE

Motion carried.

9. Commissioner Bailey: Fern Steiner, Esq., on behalf of **Heidi Kay**, Office Assistant, appealing an Order of Suspension and Charges from the Department of Parks and Recreation.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Heidi Kay, from a written Order of Suspension and Charges suspending her from the class and position of Office Assistant (Class No. 2700) in the Department of Parks and Recreation, was presented to the Civil Service Commission. The Commission appointed Commissioner W. Dale Bailey, one of its members, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on March 27, 2009.

Employee is an Office Assistant assigned to the reception desk at the Spring Valley Community Center. The Department suspended her for three working days without pay as the result of four incidents in which she was allegedly rude and disrespectful to co-workers or members of the public. She

had an incident of prior discipline for similar misconduct. At the Commission hearing, the Department proved misconduct in three of the four charged incidents. Employee proved that she suffered from a hearing condition which makes her especially sensitive to noise. This condition contributed to her behavior in the incidents but did not justify it. Each of the Charges proven would have justified a three day suspension in light of Employee's previous discipline for similar conduct in close proximity of this new misconduct. A three day suspension is insufficient to correct Employee's behavior. It is therefore recommended that the Order of Suspension be affirmed; that the level of discipline be increased to a five (5) day suspension; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Bailey to approve Findings and Recommendations; seconded by Newman. Carried.

AYES:	CASILLAS, BAILEY, NEWMAN, KRAUEL
NOES:	NONE
ABSTENTIONS:	O'CONNOR
ABSENT:	NONE

SELECTION PROCESS

Findings

10. **Thomas Menvielle**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 10 ratified.

OTHER MATTERS

Seal Performance Appraisal

11. **Richard Needham**, Senior Departmental Human Resources Officer, requesting the sealing of performance appraisals covering the periods March 3, 2006 to March 2, 2007 and March 2, 2007 through February 28, 2008.

RECOMMENDATION: Hold in abeyance pending resolution of pending litigation.

Mr. Needham addressed the Commission stating that he believes the Commission could currently vote on this matter. He explained that this is a request to seal, which is not the issue before the court at this time. By sealing his past performance appraisals, he says, the performance appraisal issue now before the court would become moot, rather than interfering with the writ, and would not be in conflict with the Commission's original order.

Karen Landers, Sr. Deputy County Counsel, was asked to comment on Mr. Needham's request. Ms. Landers stated that she cannot advise on any of the writ issues but that the Commission may consider the sealing of Mr. Needham's Performance Appraisals. It is a matter of whether the Commission chooses to wait until the writ issues are decided.

Carra Rhamy, Sr. Deputy County Counsel, believes it would be inconsistent with the Commission's ruling, and that the Commission should hold this matter in abeyance.

Commissioner Newman stated that he is opposed to the sealing of the Performance Appraisals. However, in any case, he agrees with counsel that because there is a pending writ regarding the authority of the Commission, it would be inappropriate at this time for the Commission to decide on the sealing of the Performance Appraisals.

**Motion by Bailey to accept staff recommendation;
seconded by Newman. Carried. Item No. 11 held in
abeyance pending outcome of writ currently pending.**

Extension of Temporary Appointment

12. Health and Human Services Agency

3 Residential Care Worker Trainees (Jessie Chiesman, Evelyn Hayes, Doreen Jordan)

1 Residential Care Worker I (Talo Enosa)

RECOMMENDATION: Ratify

Commissioner Newman requested that the Agency explain why these positions are temporary extensions, rather than permanent positions, since they are needed in perpetuity. Kim Medeiros, Group HR Director, HHSA, explained that there needs to be a specific ratio of workers-to-youth at the Polinsky Center to meet licensing requirements. She further stated that 12 permanent positions have been added and the

Agency is currently interviewing these residential care workers for permanent placement if they are willing to accept permanent County employment. Commissioner Newman stated that he will continue to monitor the extensions.

Item No. 12 ratified.

13. Public Input. **None.**

INFORMATION

14. Donovan Jacobs, Esq., on behalf of **2009-02**, withdrawal of appeal of an Order of Termination and Charges from the Sheriff's Department. (Commissioner Bailey)

Withdrawn.

ADJOURNED: 3:12 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: JUNE 3, 2009

ASSISTANCE FOR THE DISABLED:

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